

EB 04-381

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION, INC., COX
COMMUNICATIONS GULF COAST,
L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent,

P.A. No. 00-004

TO: Cable Services Bureau

PETITION FOR TEMPORARY STAY

**FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION, INC., et al**

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July 10, 2000

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MISCELLANEOUS

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SUMMARY

For at least the past two decades, Florida cable operators have attached their facilities to Gulf Power Company ("Gulf Power") poles based upon voluntarily signed pole contracts. However, Florida cable operators recently have begun receiving letters from Gulf Power stating its intentions to terminate its pole attachment agreements effective June 30, 2000. Gulf Power stated, furthermore, that the only way that cable operators may continue to attach to the utility's poles is to execute a new pole agreement before Gulf Power's arbitrary June 30, 2000 deadline. The terms, conditions, and charges in this agreement are predicated upon Gulf Power's claim that the Telecommunications Act of 1996 ("1996 Act") effects a "taking." In particular, Gulf Power has informed operators that the rates it intends to demand in such new pole agreements will rise **more than 514 percent (and in one case as high as 550 percent)** from the current annual rate of approximately \$6.20 per pole to a new rate of \$38.06 per pole. Despite repeated requests by Florida cable operators for Gulf Power to reconsider its position, Gulf Power has refused. On July 6, 2000 operators in Florida received their formal notice of the new pole attachment rate when it received pole-rental invoices containing the new rate.

It is a violation of 47 U.S.C. § 224 for Gulf Power unilaterally to terminate agreements and arrangements for pole attachments. These relationships have been voluntarily entered into and maintained during a course of dealing lasting for a substantial number of years. It is unlawful to attempt to impose exorbitant and monopolistic new rates that do not comply with the Commission's pole rate methodology, and it is a violation of Commission rules and procedures to make these unilateral demands, threaten cable operators' existing arrangements, and not negotiate in good faith.

Simultaneously with the filing of this Petition, Petitioners have filed a Complaint challenging the validity of Gulf Power's actions. With this submission, Petitioners respectfully request relief from the irreparable injury they will suffer prior to the Commission's adjudication of that Complaint if their existing, negotiated pole attachment arrangements that govern their day-to-day operations are terminated, or if Petitioners are forced to pay exorbitant rates that will prevent or delay the deployment of new services to customers. Because the four criteria by which such a petition should be evaluated weigh heavily in favor of Petitioners, the stay should be granted.

**Before The
FEDERAL COMMUNICATIONS COMMISSION
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FLORIDA CABLE
TELECOMMUNICATIONS
ASSOCIATION, INC., COX
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v.

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Respondent.

FCC/MELLON

JUL 10 2000

P.A. No. 00-004

PETITION FOR TEMPORARY STAY

Pursuant to 47 C.F.R. §§ 1.1403(d) and 1.1415, the Florida Cable Telecommunications Association, *et al.* on behalf of its members (the "Association"), ("Petitioners") hereby petition the Federal Communications Commission ("FCC" or the "Commission") for a stay against (1) the termination by Gulf Power Company ("Gulf Power") of Petitioners' pole attachment contracts; and (2) Gulf Power's imposition of an exorbitant, unlawful, rate increase to \$38.06 per pole.

I. BACKGROUND

For at least the past two decades, Florida cable operators have attached their facilities to Gulf Power poles based upon voluntarily signed pole contracts. Complaint, Ex. 7, ¶ 15; Ex. 8, ¶ 5. However, recently Gulf Power began informing cable operators of its intention to terminate existing pole attachment agreements, and not to review those due to expire. Gulf Power informed the Florida operators in its service area that in order for them to continue to

remain on Gulf Power poles, they would be required to execute a new pole attachment agreement no later than June 30, 2000. In particular, Gulf Power informed operators that the pole rate in the new contracts will rise **more than 514 percent (and in one case as high as 550 percent)** from the current annual rate of approximately \$6.20 per pole to a new rate of \$38.06 per pole. Gulf Power, citing recent federal court decisions,¹ has predicated its demand for the inflated pole rental charge on its claim for entitlement to just compensation. Despite numerous attempts to negotiate the new attachment rate and arbitrary June 30 deadline, Gulf Power has refused to modify its position.² On July 6, 2000, Florida cable operators received formal notice of the new pole rate when they received an invoice reflecting the \$38.06 rate.

As discussed in the following sections, it is a violation of 47 U.S.C. § 224 for Gulf Power to unilaterally force cable operators to execute new contracts, thereby terminating their existing arrangements for pole attachments. These agreements have been voluntarily entered into and maintained during a two-decade course of dealing. It is unlawful to impose exorbitant and monopolistic new rates that do not comply with the Commission's pole rate methodology, and it is a violation of Commission rules and procedures to make these unilateral demands, threaten cable operators' existing contracts, and refuse to negotiate in good faith.

Simultaneously with the filing of this Petition, Petitioners have filed a Complaint in order to challenge the validity of Gulf Power's actions and the new \$38.06 rate. Petitioners

¹ See *Gulf Power Co. v. United States*, 187 F.3d 1324 (11th Cir. 1999) ("*Gulf Power I*") and *Gulf Power Co. v. FCC*, 208 F.3d 1263 (11th Cir. Apr. 11, 2000) ("*Gulf Power II*").

² Adherence to the FCC's formula produces an attachment rate between \$4.16 and \$4.93 per pole per year. Complaint, Ex. 16. Moreover, Gulf Power conceded in its correspondence with Cox Communications Gulf Coast and Comcast that its own calculation, in accordance with the Commission's rate calculation formula, yielded an annual attachment rate of \$4.61. Complaint, Ex. 14. Cable Operator Complainants nevertheless have no dispute with paying the moderately higher rates in the \$5.00 to \$6.20 range, to which they voluntarily contracted. Based on the information acknowledged by Gulf Power, Cable Operator Complainants are paying pole rental charges higher than the maximum permitted rate calculated under the Commission's rules. Petitioners have demonstrated their willingness to honor their contractual obligations even if Gulf Power refuses to do the same.

hereby request relief from the irreparable injury they will suffer prior to the Commission's adjudication of that Complaint if their existing, negotiated pole attachment contracts that govern their day-to-day operations are terminated or if Petitioners are forced to pay exorbitant rates. The payment of such rates will prevent or delay the deployment of new services to customers. Because the four criteria by which such a petition should be evaluated weigh heavily in favor of Petitioners, the stay should be granted.

II. FACTS

Petitioners and Gulf Power have voluntarily entered into pole attachment contracts for more than two decades. Complaint, Ex. 7, ¶ 15; Ex. 8, ¶ 5. The currently applicable contracts give Petitioners a license to attach their cables and related facilities to Gulf Power's poles but not a share of ownership or property rights in the poles. Complaint, Exs. 3, 4 and 5. Petitioners' contracts with Gulf Power usually provide for a term of several years. Complaint, Exs. 3, 4 and 5. In most cases, the contracts also provide that they remain in effect after the specified term expires unless one party gives written notice of its intent to terminate the contract to the other party. Complaint, Ex. 3, ¶ 23(E); Ex. 4, ¶ 23(E); Ex. 5, ¶ 23(E).

When one party, usually the utility, has given notice of an intent to terminate, the parties' regular practice during the last two decades has been that, despite contractual language purporting to require the removal of Petitioners' cables and wires from the utility's poles, the parties have agreed that Petitioners' facilities may remain on the poles during the conduct of good faith negotiations towards a new pole agreement. Complaint, Ex. 7, ¶ 15; Ex. 8, ¶ 5. When a pole agreement in Florida has been terminated (or has expired) during the course of the last twenty years, the parties' custom and course of dealing has been to permit Petitioners' facilities to remain in place during the negotiation of a new pole agreement. Complaint, Ex. 7, ¶ 15; Ex. 8, ¶

5. Gulf Power has abruptly threatened to dispense with this course of dealing and to suddenly disrupt Petitioners' business and service to their customers.

Petitioners were shocked to learn of Gulf Power's intent to unilaterally require the execution of new agreements and terminate all Florida cable operators' existing pole attachment contracts. These contracts govern all of the day-to-day operations under which Petitioners use Gulf Power poles, including engineering, safety, and other technical matters. Petitioners' representatives have asked Gulf Power for extensions of time in an effort to negotiate the new rate and other terms and conditions of the new agreements. Gulf Power has refused to provide the requested extensions, precipitating this Petition and accompanying Complaint. Complaint, Ex. 7, ¶ 11.

Gulf Power's communications with Petitioners provide no indication that the costs of Petitioners' pole attachments have changed in any way. Instead, even though Petitioners' facilities are currently located on Gulf Power's poles through voluntarily negotiated contracts that provide detailed terms for the cooperative use of those poles, Gulf Power's letter announces that it intends to simply do away with those contracts, the terms of which are "non-negotiable." Complaint, Ex. 7, ¶ 10. Adding insult to injury, at least one Cable Operator Complainant is being subject to these rate increases and agreement terminations despite the fact that less than 44% of its facilities on Gulf's poles are used for providing advanced services (those that in Gulf's view are no longer subject to Commission regulation). Complaint, Ex. 7, ¶ 11.

Gulf Power's threat to terminate Petitioners' pole attachment contracts and to impose the exorbitant new rate of \$38.06 per pole will cause substantial and irreparable harm to Petitioners.

First, the termination of existing contracts would remove the provisions which currently govern all of the day-to-day matters involving pole attachments, including matters relating to construction, modification, rights-of-way, transfers, inspections, damage and indemnification, safety, and other technical and engineering issues. Complaint, Exs. 3, 4 and 5. The absence of these negotiated provisions would impose enormous uncertainty and substantial technical and financial risks upon Petitioners during their conduct of daily operations, including installations, repairs, upgrades, and rebuilds. Furthermore, Petitioners cannot readily reproduce a substitute facility for Gulf Power's poles. Complaint, Ex. 8, ¶ 11. In particular, Petitioners cannot feasibly move their facilities underground. Municipal authorities would be outraged at the very prospect, and cable operators cannot antagonize authorities who control the terms of their franchises, transfers, and upgrades. Complaint, Ex. 8, ¶ 11.³

Furthermore, Gulf Power's more than 514 percent increase in rates would also irreparably harm Petitioners, their customers, and the public. In particular, if Petitioners were forced to use their limited development funds to pay the \$38.06 rate, their ability to offer new services such as digital cable service, expanded video service, and advanced telecommunications service would be substantially limited. Complaint, Ex. 7, ¶ 18; Ex. 8, ¶¶ 9, 13, 15. Moreover, experience shows that, if Petitioners attempted to raise their rates to recover even a part of Gulf Power's huge increase in pole rents, they would quickly lose subscribers to satellite and other competitors. Complaint, Ex. 7, ¶ 16; Ex. 8, ¶ 10.

In addition, some multiple system operators ("MSOs") compete for funds from the corporate or regional offices. Cable systems within MSOs that depend heavily upon Gulf

³ Of course, the removal of Petitioners' facilities would disrupt service to many customers. Complaint, Ex. 8, ¶¶ 5, 11, 13. In addition, Gulf Power's threat to disrupt Petitioner's business would cause significant harm to Petitioners' customer goodwill and reputational standing. Cable operators' experience has been that once a customer loses

Power pole attachments would have significantly higher operating costs than systems that have attachments with other entities and would therefore take much longer to recover their costs. That could make those systems and the communities they serve less likely to obtain needed funds in the present for new or additional services. It could also jeopardize rebuild plans. Complaint, Ex. 7, ¶ 18.

Furthermore, Gulf Power's pole rate increase, if implemented, is likely to prevent or delay some Petitioners' rebuilds and other services to the public. Gulf Power's imposition of drastically higher rates would unquestionably have a detrimental effect on some cable operators' rebuild plans. Complaint, Ex. 7, ¶ 18; Ex. 8 ¶¶ 9, 13, 14. In addition, Gulf Power's new rate would mean that cable operators' expenses in serving public entities, such as schools, libraries, and government facilities, would greatly increase. Since operators obtain no cost recovery for wiring such public facilities, the magnitude of the expense of using Gulf Power pole to provide connections is likely in at least some cases to render such service economically infeasible. Complaint, Ex. 8, ¶ 14. Thus, Gulf Power's sudden imposition of a pole rate more than six times higher than current rates without any substantive basis for doing so threatens to prevent or delay the roll out and delivery of advanced communications services.

III. ANALYSIS

In determining whether the stay requested herein should be granted, the Commission should examine whether: (1) there is a substantial likelihood Petitioners will succeed on the merits; (2) Petitioners will be irreparably injured if a stay is not granted; (3) a stay will not harm the other party; and (4) the public interest will be furthered by a stay. *Serono Laboratories v. Shalala*, 158 F.3d 1313, 1317-18 (D.C. Cir. 1998), *citing Washington Metro*.

service for any sustained period, that customer is likely to subscribe to a competitor and not return to the cable operator. Complaint, Ex. 7, ¶ 16.

Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); *see also TCI Cablevision of Dallas, Inc.*, 14 FCC Rcd. 9252 (rel. June 11, 1999). "These factors are interrelated on a sliding scale and must be balanced against each other. 'If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak.'" *Serono*, 158 F.3d at 1318 (internal citations omitted). In particular,

To justify a temporary [stay] or injunction, it is not necessary that the plaintiff's right to a final decision, after a trial, be absolutely certain, wholly without doubt; if the other elements are present (i.e., the balance of hardships tips decidedly toward plaintiff), it will ordinarily be enough that the plaintiff has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.

Holiday Tours, 559 F.2d at 844. Because these factors, individually and collectively, weigh heavily in favor of Petitioners, the stay should be granted.

A. Gulf Power's Impending Threat To Terminate Petitioners' Contracts And Its Demand For An Exorbitant New Rate That Does Not Comply With The Commission's Methodology, Are Unreasonable Practices Warranting The Issuance Of A Temporary Stay

Gulf Power's recent demand that Petitioners sign new, non-negotiable contracts constitutes a threat to terminate Petitioners' existing agreements. This action, coupled with Gulf Power's pole invoices dated July 5, 2000 imposing a massive fee increase, constitutes a violation of both the parties' contractual course of dealing and Gulf Power's duty to negotiate pole agreements in good faith. Accordingly, the Commission should temporarily stay the termination of Petitioners' contracts and the imposition of the new pole rate pending its adjudication of the Complaint filed contemporaneously with this Petition.

It is well-established that a mutual course of dealing may effect a modification of the terms of a written contract. *Gulf States Utilities Co. v. Federal Power Commission*, 518 F.2d

450, 455 (D.C. Cir. 1975); *Sam Rayburn Dam Electric Coop. v. Federal Power Commission*, 515 F.2d 998, 1009 (D.C. Cir. 1975), *citing* 3A *Corbin*, Contracts § 524 at 297 (1960); 17 *Am. Jur.*, Contracts § 466; *see also Restatement (Second) of Contracts* § 223(2) ("Unless otherwise agreed, a course of dealing between the parties gives meaning to or supplements or qualifies their agreement"). In this case, Gulf Power's termination of Petitioners' contracts is clearly an unreasonable practice, since it is motivated not by an increase in Gulf Power's costs or some other change in circumstances, but rather by a mere attempt to avoid the Commission's pole rate formula entirely. Complaint, Exs. 9 and 14.

Gulf Power's actions are inconsistent with the parties' established course of dealing. Gulf Power's mailing of pole invoices dated July 5, 2000 at the increased rate is a thinly veiled threat to effectively remove Petitioners' facilities if they do not agree to the exorbitant rate increase. If Petitioners refused to pay, they would be in default under the terms of their agreements and thus be subject to removal from Gulf Power's poles. Although Gulf Power's pole contracts state that "[Licensee] shall, within thirty (30) days following the expiration of this Agreement, remove its attachment from Gulf's poles," Complaint, Ex. 3, ¶ 23(C), Ex. 4, ¶ 23(C), Ex. 5, ¶ 23(C), it has been the consistent and regular practice of Gulf Power and Petitioners during the last two decades that, when a pole agreement is terminated or even expired, Petitioners are permitted to maintain their existing facilities on Gulf Power poles during the negotiations leading to a new pole agreement. Complaint, Ex. 7, ¶ 15; Ex. 8, ¶ 5. This course of dealing permits Petitioners to continue serving their customers without interruption and enables Gulf Power to both avoid the disruption of changes to its poles and receive continued revenue from the established attachments. Gulf Power's attempt to vitiate this established practice and to

threaten the wholesale disruption of Petitioners' service to their customers is an unreasonable practice warranting the issuance of a stay.

Gulf Power's demand for a pole fee increase to \$38.06 as a condition of Petitioners' maintaining their attachments on Gulf Power's poles also constitutes a violation of the Commission's established requirement under Section 224 that utilities must negotiate all pole attachment agreements in good faith. *See Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, Memorandum Opinion and Order on Reconsideration*, 4 FCC Rcd. 468 (1989) at ¶ 39; *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, Report and Order*, 2 FCC Rcd. 4387 at n. 51 (1987).

When Petitioners first received notification of Gulf Power's intent to terminate the agreement and to raise the attachment rate, they immediately attempted to negotiate with the utility. Despite Petitioners' efforts, the utility refused. Complaint, Ex. 7, ¶¶ 8-11.

Before bringing this Petition for Temporary Stay and Complaint, Petitioners notified Gulf Power of their desire to maintain ongoing relations. Complaint, Ex. 7, ¶ 10. Petitioners further requested information, pursuant to the Commission's rules in 47 C.F.R. §§ 1.1404(g) and (j), concerning the utility's reasons for seeking to terminate such relations and what data underlies both its current pole rate and its proposed new rate of \$38.06 per pole. Complaint, Ex. 12; Ex. 7, ¶ 8. With regard to cable operators' request for the relevant Gulf Power cost data underlying its new demand for a \$38.06 per pole fee, Gulf Power to date has refused to provide much of this information. Rather, Gulf Power has claimed that the information requested under the Commission's rules is confidential and that Gulf Power would not release the data unless cable operators executed a confidentiality agreement. Complaint, Ex.

13. Gulf Power has not only refused to conduct any negotiations in good faith, it has also violated 47 C.F.R. § 1.1404(g) and forced Petitioners and the Commission away from the fundamental tenet of pole-attachment regulation that pole rents are to be calculated on the basis of publicly-available information.

For these reasons as well, Gulf Power's threatened termination, invalidation of the terms of use of Petitioners' facilities, and imposition of its astronomically high pole rent should be stayed pending the Commission's consideration of Petitioners' Complaint.

B. Petitioners Will Be Irreparably Harmed By Gulf Power's Threatened Termination And Its Demand For Exorbitant Pole Fees

Gulf Power's threat to terminate Petitioners' pole attachment contracts, and its threat to impose the exorbitant new rate of \$38.06 per pole will cause substantial and irreparable harm to Petitioners in the form of lost customers, competitive disadvantage in rolling out new services and products, damage to business reputation and goodwill, and even, in some cases, the closing of business.

The courts have made clear that such harm is irreparable. *See Mova Pharmaceutical Corp. v. Shalala*, 140 F.3d 1060 (D.C. Cir. 1998)(loss of a "head start" in delivering a new product to market suffices to show a severe economic impact and irreparable harm); *Patriot, Inc. v. U.S. Department of Housing and Urban Development*, 963 F. Supp. 1, 10 (D.D.C. 1997)(economic harm that effectively bars a plaintiff from entering a market constitutes irreparable harm, as does damage to business reputation); *Lutz Appellate Printers, Inc. v. Busby*, No. 89-2870-OG, 1989 U.S. Dist. LEXIS 13633 at *3 (D.D.C. Nov. 14, 1989)(lost accounts, profits and goodwill constitute irreparable harm).

First, Gulf Power's threat to terminate Petitioners contracts for access to Gulf Power's poles could disrupt service to more than 202,000 customers. Complaint, Ex. 8, ¶ 5.

Petitioners cannot readily reproduce a substitute facility for Gulf Power's poles. Complaint, Ex. 8, ¶ 11. In particular, Petitioners cannot feasibly move their facilities underground. Municipal authorities would be outraged at the very prospect, and cable operators cannot antagonize authorities that control the terms of their franchises, transfers, and upgrades. Complaint, Ex. 8, ¶ 11. The length of any such disruption, should Gulf Power deny Petitioners permission to operate under the terms of their contracts, cannot be determined. In addition, Gulf Power's threat to disrupt Petitioner's business would cause significant harm to Petitioners' customer goodwill and reputational standing. Ex. 8, ¶ 5. Cable operators' experience has been that once a customer loses service for any sustained period, that customer is likely to subscribe to a competitor and not return to the cable operator. Complaint, Ex. 7, ¶ 16.

Furthermore, Gulf Power's more than 514 percent increase in rates would also irreparably harm Petitioners, their customers, and the public. In particular, if Petitioners were forced to use their limited development funds to pay the \$38.06 rate, their ability to offer new services such as digital cable service, expanded video service, and advanced communications service would be substantially limited. Complaint, Ex. 7, ¶¶ 8-10; and Ex. 8, ¶¶ 9-11. Moreover, experience shows that, if Petitioners attempted to raise their rates to recover even a part of Gulf Power's huge increase in pole rents, they would quickly lose subscribers to satellite and other competitors. Complaint, Ex. 7, ¶¶ 8-10; and Ex. 8, ¶¶ 9-11.

Gulf Power's threatened fee increases would also have other harmful effects on both large and small cable operators. Large multiple system operators ("MSOs") compete for funds from the corporate or regional office. Cable systems within MSOs that depend heavily upon Gulf Power pole attachments would have significantly higher operating costs than systems that have attachments with other entities. Therefore, systems utilizing Gulf Power poles would

take much longer to recover their costs, thereby making those systems and the communities they serve less likely to obtain needed funds in the present for new or additional services. Losses to customers who are unable to benefit from advanced services would be immeasurable.

In sum, the loss of customers, the competitive disadvantage in rolling out new services and products, the damage to business reputation and goodwill, and the unfairness and patent unlawfulness of being subject to “through-the-roof” rate increases that Petitioners are likely to experience, if either (1) Gulf Power terminates Petitioners' contracts or (2) Gulf Power imposes its \$38.06 per pole fee, constitutes irreparable harm.

C. Gulf Power Would Not Be Harmed By A Temporary Stay

By granting the requested temporary stay, the Commission would be preserving the *status quo* until it has an opportunity to determine whether Gulf Power's recent notice of termination and fee increase are unlawful. Gulf Power would continue to receive pole rental payments from Petitioners at present levels. Moreover, since the underlying factual circumstances of Petitioners' pole attachments, and the underlying costs incurred by Gulf Power in maintaining its poles, have not changed, the same terms and conditions contained in Petitioners' contracts are applicable. Therefore, Gulf Power would sustain no harm upon the grant of a temporary stay against the termination of the existing contracts and the imposition of the exorbitant new pole fee.

D. The Public Interest Requires That The Temporary Stay Be Granted

If Gulf Power is allowed to terminate Petitioners' contracts or, through its more than 514 percent pole rent increase, to prevent or delay Petitioners' rebuilds and delivery of new services, the general public would be harmed immeasurably. Any termination of Petitioners' ability to use their plant would, of course, deprive their customers of the valuable cable services which Petitioners provide. Moreover, Gulf Power's imposition of drastically higher pole rates would unquestionably have a detrimental effect on Petitioners' rebuild and upgrade plans. Complaint, Ex. 7, ¶ 18; Ex. 8, ¶ 13. In addition, Gulf Power's new rate would mean that cable operators' expenses in serving public entities, such as schools, libraries, and governmental facilities, would greatly increase. Since operators obtain no cost recovery for wiring such public facilities, the magnitude of the expense of using Gulf Power poles to provide connections is likely in many cases to render discretionary programs and services economically infeasible. Complaint, Ex. 8, ¶ 13.

Finally, the Commission has actively encouraged cable operators to expand the scope of services that they offer and enter new markets in order to promote competition. Gulf Power's abuse of its government-granted, monopoly control over poles by threatening either to terminate Petitioners' use of facilities or more than quintuple their pole rents will prevent or delay delivery of new services to customers and hinder, rather than promote, free competition. Such restraint is directly contrary to the public's interest in being able to select a wide range of communications services from the broadest possible group of providers.

IV. CONCLUSION

For all of the foregoing reasons, Petitioners respectfully request that the Commission grant a stay and order Gulf Power to cease and desist from all efforts unilaterally to terminate Petitioners' pole attachment agreements and arrangements and to impose exorbitant new pole attachment rates inconsistent with Commission's formula, until such time as the Commission determines the reasonableness of Gulf Power's actions

Respectfully submitted,

**FLORIDA CABLE TELECOMMUNICATIONS
ASSOCIATION, INC., et al**

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July 10, 2000

CERTIFICATE OF SERVICE

I, Nichele Rice, hereby certify that on this 10th day of July, 2000, I caused a copy of the foregoing Petition for Temporary Stay, to be sent via FedEx(*), hand delivery(**), or regular mail to the following:

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